

**Congress of the United States**  
**Washington, DC 20515**

April 17, 2020

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, DC 20202-7100

Dear Secretary DeVos,

We write to ask that you determine your recommendation for waivers to education laws, authorized in the Coronavirus Aid, Relief, and Economic Security Act, with high scrutiny to ensure that even short-term changes due to the waiver of a requirement do not cause long-term harm and do not infringe upon the civil rights of students with disabilities, English language learners (ELLs), and other students that require special accommodations. You must ensure states, post-secondary institutions, and local educational agencies (LEAs) meet student needs within the flexibilities that exist in current law, rather than waiving requirements of the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, the Elementary and Secondary Education Act of 1965 (ESEA), and other education laws.

School closures due to COVID-19 have impacted over 55.1 million students of over 124,000 public and private schools across the nation,<sup>1</sup> and over 7,000 institutions of higher education.<sup>2</sup> Teachers and school officials are earnestly working to personally navigate this unprecedented dilemma while helping their students transition to online learning. As schools evolve through this crisis, your guidance to schools and waivers to pre-existing law carry extraordinary influence.

### Students with Disabilities

Fourteen percent of all public school students, 7 million students, receive education services under IDEA.<sup>3</sup> Additionally, 19 percent of students in postsecondary education reported they have disabilities.<sup>4</sup> Your recent guidance to schools explains that “federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities.”<sup>5</sup> As IDEA offers flexibility by design, waivers to IDEA or Rehab Act are unnecessary.

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<sup>1</sup>“Map: Coronavirus and School Closures,” Education Week, March 6, 2020, <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html>  
<sup>2</sup>“Fast Facts: Educational Institutions,” National Center for Education Statistics, April, 2020, <https://nces.ed.gov/fastfacts/display.asp?id=84>

Instead, we ask that you:

- Ensure educational institutions of all grade levels continue to provide clear guidance on disability eligibility services, including mental health services.
- Continue to reinforce that states and LEAs have an ongoing obligation to continue to provide Free Appropriate Public Education (FAPE) to students with disabilities.
- Continue to reinforce that post-secondary institutions continue to provide education in accordance with Section 504 of the Rehabilitation Act.
- Ensure the use of federal education funds adhere to the IDEA, the Rehabilitation Act, the Americans with Disabilities Act and other civil rights laws.

### English Language Learners

As you know, under civil rights law, schools are obligated to ensure that all students, including English language learners, have equal access to education. Furthermore, schools would be in violation if students are unable to participate in school due to language barriers, if the English language acquisition program is inadequate, or if schools fail to translate resources for parents with limited English proficiency.<sup>6</sup> In efforts to uphold these laws, we urge you to:

- Address the gap in access and availability of digital resources, including devices, connectivity, and digital programs designed to serve the unique learning needs of ELLs as schools transition to e-learning platforms. This includes providing frequent communication with parents of ELL students in the languages they speak.
- Ensure students and their families at all levels of education understand their rights during the pandemic, in as many languages as possible, including American Sign Language. Also, waivers to allow funds from student academic support and college access programs that target low-income and first-generation students to be transferred to other programs could have negative and multigenerational effects.

### Institutionalized Students

IDEA mandates that students who are in juvenile detention facilities, institutions, hospitals, or jail still be provided special education services by their home district and that the state and district make every effort to identify unidentified students with disabilities through the Child Find mandate.

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<sup>3</sup>“The Condition of Education - Preprimary, Elementary, and Secondary Education - Elementary and Secondary Enrollment - Children and Youth With Disabilities,” National Center for Education Statistics, May, 2019, [https://nces.ed.gov/programs/coe/indicator\\_cgg.asp](https://nces.ed.gov/programs/coe/indicator_cgg.asp)

<sup>4</sup>“The NCES Fast Facts Tool provides quick answers to many education questions,” National Center for Education Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=60>

<sup>5</sup>“Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities,” United States Department of Education, Office for Civil Rights Office of Special Education and Rehabilitative Services, March 21, 2020, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

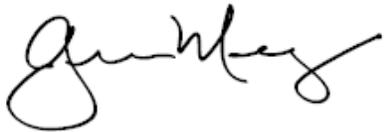
<sup>6</sup>“Q: What Legal Obligations Do Schools Have to English Language Learners (ELLs)?” National Clearinghouse for English Language Acquisition, <https://ncela.ed.gov/faqs/view/6>

Given the potential for COVID-19 to affect each of these institutions, you must:

- Ensure that institutionalized students continue to receive quality educational programming and special education services in their respective settings.

While the effects of COVID-19 have aggravated all our lives, the challenges are far greater for students with disabilities, English language learners, institutionalized students, and students who require accommodations. You must protect the basic rights of students and ensure that waivers instituted in response to COVID-19 do not disproportionately impact students most in need.

Sincerely,



Grace Meng  
Member of Congress

/s/ Raúl M. Grijalva  
Member of Congress

/s/ Thomas R. Suozzi  
Member of Congress

/s/ Eleanor Holmes Norton  
Member of Congress

/s/ Peter A. DeFazio  
Member of Congress

/s/ James P. McGovern  
Member of Congress

/s/ Rashida Tlaib  
Member of Congress

/s/ Alan Lowenthal  
Member of Congress

/s/ Bill Foster  
Member of Congress

/s/ Seth Moulton  
Member of Congress

/s/ Eliot L. Engel  
Member of Congress

/s/ Jahana Hayes  
Member of Congress

/s/ TJ Cox  
Member of Congress

/s/ Sheila Jackson Lee  
Member of Congress

/s/ James R. Langevin  
Member of Congress

/s/ Judy Chu  
Member of Congress

/s/ Darren Soto  
Member of Congress

/s/ Jesús G. "Chuy" García  
Member of Congress

/s/ Frederica S. Wilson  
Member of Congress

/s/ Nydia M. Velázquez  
Member of Congress

/s/ Gregory W. Meeks  
Member of Congress

/s/ Ayanna Pressley  
Member of Congress

/s/ Sanford D. Bishop, Jr.  
Member of Congress

/s/ Grace F. Napolitano  
Member of Congress

/s/ Jared Huffman  
Member of Congress

/s/ David E. Price  
Member of Congress

/s/ Adriano Espaillat  
Member of Congress

/s/ Jim Cooper  
Member of Congress

/s/ Tulsi Gabbard  
Member of Congress

/s/ Danny K. Davis  
Member of Congress

/s/ Emanuel Cleaver, II  
Member of Congress

/s/ Sean Patrick Maloney  
Member of Congress

/s/ Joaquin Castro  
Member of Congress

/s/ Alexandria Ocasio-Cortez  
Member of Congress

/s/ Jerrold Nadler  
Member of Congress

/s/ Marcia L. Fudge  
Member of Congress